



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

CHAIRMAN INEZ M. TENENBAUM

April 29, 2010

The Honorable Henry A. Waxman
Chairman
Committee on Energy and Commerce
United States House of Representatives
Washington, DC 20515

The Honorable Joe Barton
Ranking Member
Committee on Energy and Commerce
United States House of Representatives
Washington, DC 20515

The Honorable Bobby Rush
Chairman
Subcommittee on Commerce, Trade and
Consumer Protection
Committee on Energy and Commerce
United States House of Representatives
Washington, DC 20515

The Honorable Ed Whitfield
Ranking Member
Subcommittee on Commerce, Trade and
Consumer Protection
Committee on Energy and Commerce
United States House of Representatives
Washington, DC 20515

Dear Chairman Waxman, Ranking Member Barton, Chairman Rush, and Ranking Member Whitfield:

Since the enactment of the landmark Consumer Product Safety Improvement Act (CPSIA) in August 2008, the staff of the U.S. Consumer Product Safety Commission (CPSC) has worked diligently to implement that law in a manner that substantially strengthens our nation's consumer product safety requirements, while remaining cognizant of the potential compliance challenges facing manufacturers and, particularly, crafters and small businesses.

In less than two years, the Commission has published over fifty rules and interpretive policy statements in the Federal Register. Many of these documents have been specifically targeted towards providing guidance to the regulated community. In addition, Commission staff has conducted substantial outreach to interested parties, including small businesses and crafters, through meetings, outreach sessions, webinars, a two day workshop, and one-on-one discussions sessions.

The results of these implementation efforts have largely been positive. Overall, we have seen increased inspections at our borders, decreasing recalls, and better overall compliance with new product safety standards. At the same time, however, the Commission has also faced challenges with certain provisions in the CPSIA, such as granting targeted exemptions to the lead limits in Section 101.

On January 15, 2010, the Commission issued a Report to Congress analyzing some of the challenges the Commission has faced, and recommended certain changes to CPSIA that would provide additional flexibility with regard to the Section 101 lead limits and also address certain small manufacturer and crafter concerns.

After that report was issued, Members and staff on this Subcommittee crafted changes that provide the Commission with flexibility in several areas, while still preserving the vital protections established in the CPSIA. To that end, I commend the Subcommittee's work on the CPSEA.

In its current form, I believe the CPSEA would address many of the concerns raised in the Commission's January 15, 2010, Report to Congress and enhance the Commission's overall authority to protect consumers from dangerous products. Specifically, the CPSEA would: 1) modify the lead limits in Section 101 of the CPSIA to provide a functional purpose exemption, relief for thrift stores, and prospective application of the future 100 parts per million (ppm) lead limits; 2) allow the Commission to consider alternatives to third party testing requirements for certain low volume manufacturers; 3) establish an Office of Education, Outreach, and Small Business Ombudsman; and 4) provide targeted technical fixes to certain other provisions in the CPSIA and the Virginia Graeme Baker Pool and Spa Safety Act state grant program.

Functional Purpose

Much of the debate over the lead limits in the CPSIA has focused on the issue of whether there is a "safe level of lead" for children's products. Lead is a toxic substance. The scientific and pediatric communities have thoroughly studied this issue, and are near unanimous in their opinion that there is no known safe level of lead. Low-level lead exposure has been found to affect brain function, lower intelligence, cause behavior problems, and imperil school performance. In fact, many of the scientific studies on lead demonstrate that it has harmful impacts on children right down to the lowest levels that modern technology can currently detect.

During my tenure as Chairman of the CPSC, I have urged manufacturers to get lead (and other toxic substances, like cadmium) out of children's products. I firmly believe that children's products should comply with the Section 101(a) lead limits, especially where the lead is not required. I have learned through implementation of the CPSIA, however, that there are certain cases where the exclusion of lead in certain materials or component parts is problematic and that the Commission lacks sufficient flexibility to exclude those materials or component parts from the purview of the Section 101 lead limits.

The CPSEA's "functional purpose" amendment to Section 101 provides a three-part test for exemption from the Section 101 lead limits where: 1) accessible lead is required in the manufacture of a product because it is not practicable or technologically feasible to remove it; 2) the lead-containing part is not likely to be mouthed or ingested; and 3) there is no measurable adverse impact on public health.

I support this approach because it avoids reopening a largely settled debate over whether there is a "safe level" of lead for all classes of children's products, and instead asks whether lead – a toxic contaminant – is actually required in a specific product or component part. If it is required, then the functional purpose amendment allows the Commission to take a common-sense, health protective approach to granting an exception. If it is not required then it should not be present in children's products at levels higher than the limits in Section 101.

Relief for Thrift Stores

This provision in CPSEA will allow thrift and other second hand stores to sell “used children’s products,” except for children’s metal jewelry, painted children’s toys, children’s products made mostly of vinyl, products known to violate lead limits, and any other product designated by the Commission.

While I remain concerned about allowing any exemption that could facilitate the sale of children’s products that exceed the Section 101(a) limits and do not require the inclusion of lead, I appreciate the Subcommittee’s effort to exclude categories of products that have posed the greatest risk in the past.

Prospective Application of the 100 ppm Lead Limit

Based on the agency’s experience implementing the lead content limits in Section 101 retroactively, market disruption may occur if the 100 ppm lead content limits are applied retroactively. In the January 15, 2010, Report to Congress, the Commission unanimously endorsed a prospective application of the 100 ppm lead limits; and I support this provision in the CPSEA.

Third Party Testing Alternatives for Small Batch Manufacturers

The Commission has been mindful of the small business and crafter community in its implementation of the CPSIA and has sought to use its discretion under Section 102 to address concerns about testing requirements. For example, the Commission has issued guidance directly targeted to small and home-based businesses to help them understand and comply with the Act’s new (and existing) requirements. In addition, the Commission has issued an enforcement policy on testing of lead content and lead paint that allows a substantial flexibility in both testing of component parts and composite testing of materials.

Section 4 of the proposed CPSEA provides additional authority for the CPSC to consider alternate testing methods for small businesses and crafters. This additional flexibility may prove helpful to the Commission as it continues to implement the requirements of Section 102.

Office of Education, Outreach and Small Business Ombudsman

The CPSC currently has a Small Business Ombudsman who is located in the Office of International Programs and Intergovernmental Affairs and performs those duties on a part-time basis. With passage of the CPSIA and the increased workload, it has become obvious that this staffing level is insufficient to address questions and facilitate outreach to the small business community.

In the Commission’s 2010 Operating Plan, we have established a full-time Business Ombudsman position. This person will reach out to interested business stakeholders, both large and small, to educate them about the Commission’s regulatory requirements. I believe that this position will substantially improve the Commission’s responsiveness and outreach to the business community. The proposal in the CPSEA would also greatly strengthen our efforts in this area by establishing a separate Office for Education, Outreach, and Small Business Ombudsman and authorizing appropriations specifically for outreach and education.

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The CPSEA offers a pathway towards providing the CPSC with additional flexibility, while still honoring the original intention of the CPSIA. I look forward to working with the Subcommittee and full Committee as you move forward.

Very truly yours,

A handwritten signature in cursive script, reading "Inez M. Tenenbaum".

Inez M. Tenenbaum

cc: The Honorable Jan Schakowsky
The Honorable John P. Sarbanes
The Honorable Betty Sutton
The Honorable Frank Pallone, Jr.
The Honorable Bart Gordon
The Honorable Bart Stupak
The Honorable Gene Green
The Honorable Charles A. Gonzalez
The Honorable Anthony D. Weiner
The Honorable Jim Matheson
The Honorable G. K. Butterfield
The Honorable John Barrow
The Honorable Doris O. Matsui
The Honorable Kathy Castor
The Honorable Zachary T. Space
The Honorable Bruce L. Braley
The Honorable Diana DeGette
The Honorable John D. Dingell (ex officio)
The Honorable George Radanovich
The Honorable Cliff Stearns
The Honorable Joseph R. Pitts
The Honorable Mary Bono Mack
The Honorable Lee Terry
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The Honorable Tim Murphy
The Honorable Phil Gingrey
The Honorable Steve Scalise
The Honorable Robert E. Latta